

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

KENNY KENNETH ALEXANDER,

Plaintiff,

v.

VERIZON WIRELESS,

Defendant.

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Case No. 6:19-CV-162-JDK-KNM

ORDER OF DISMISSAL

The above-entitled and numbered civil action was referred to United States Magistrate Judge K. Nicole Mitchell, who issued a Report and Recommendation concluding that the action should be dismissed with prejudice for failure to state a claim on which relief may be granted. Docket No. 12.

This Court reviews the findings and conclusions of the Magistrate Judge *de novo* only if a party files objections within fourteen days of service of the Report and Recommendation. 28 U.S.C. § 636(b)(1). In conducting a *de novo* review, the Court examines the entire record and makes an independent assessment under the law. *Douglass v. United Servs. Auto. Ass’n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (en banc), *superseded on other grounds by statute*, 28 U.S.C. § 636(b)(1) (extending the time to file objections from ten to fourteen days). Here, Plaintiff did not file objections. The Court will therefore review the Magistrate Judge’s findings for clear error or abuse of discretion and her conclusions to determine whether they are contrary to law. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989), *cert. denied*, 492 U.S. 918 (1989) (holding that, if no objections to a Magistrate Judge’s Report are filed, the standard of review is “clearly erroneous, abuse of discretion and contrary to law”).


The Magistrate Judge recommended that the Court dismiss Plaintiff's 42 U.S.C. § 1983 claim with prejudice because § 1983 applies only to a person who acts under color of state law to deprive another of constitutional rights. Docket No. 12 at 2; *see Monroe v. Pape*, 365 U.S. 167, 184 (1961); *Love v. King*, 784 F.2d 708, 712 (5th Cir. 1986). Plaintiff failed to allege any facts showing that Defendant acted under color of state law or violated his constitutional rights. Plaintiff therefore has not stated a claim upon which relief may be granted.

The Report and Recommendation of the Magistrate Judge, which contains her findings, conclusions, and recommendation for the disposition of the Complaint has been presented for consideration. The Report and Recommendation (Docket No. 12), filed on May 29, 2019, recommends that the Complaint be dismissed with prejudice for failure to state a claim upon which relief may be granted. 28 U.S.C. § 1915(e)(2)(B)(ii). Plaintiff did not file objections. The Court therefore **ADOPTS** the findings and conclusions of the Magistrate Judge as those of the Court. It is accordingly

ORDERED that the Complaint is **DISMISSED WITH PREJUDICE** for failure to state a claim upon which relief may be granted. 28 U.S.C. § 1915(e)(2)(B).

Any motion not previously ruled on is **DENIED**.

So **ORDERED** and **SIGNED** this **27th** day of **June, 2019**.


JEREMY D. KERNODLE
UNITED STATES DISTRICT JUDGE